

Introduced by Senator Ducheny

February 23, 2006

An act to amend Sections 60640 and 60850 of the Education Code, relating to pupil assessment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1580, as introduced, Ducheny. Pupil assessment: English language learners: achievement tests: high school exit examination.

(1) Existing law, the Standardized Testing and Reporting (STAR) Program, requires each school district, charter school, and county office of education to administer a designated achievement test to each of its pupils in grades 3 and 7 and a standards-based achievement test to each of its pupils in grades 2 to 11, inclusive, until July 1, 2007, and to each of its pupils in grades 3 to 11, inclusive, after July 1, 2007.

Existing law, operative July 1, 2007, authorizes a pupil of limited English proficiency enrolled in any of grades 3 to 11, inclusive, to take a 2nd achievement test in his or her primary language at the option of the school district. Existing law, operative July 1, 2007, requires a pupil identified as limited English proficient pursuant to a specified test who is enrolled in any of grades 3 to 11, inclusive, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months, to take a test in his or her primary language if a test is available.

This bill would delete those provisions and instead require a pupil identified as limited English proficient and who is either literate in his or her primary language to take the standards-based achievement test in his or her primary language as soon as the primary language test is available. The bill would require a pupil identified as limited English proficient who has attended a school in the United States for 3 consecutive years or more to take the achievement test in English that

is modified, as provided, instead of the primary language achievement test. The bill would require the State Department of Education, by January 1, 2008, to modify the standards-based achievement test, as provided, for limited-English-proficient pupils. The bill would authorize a school district, on a case-by-case basis, to instead administer an achievement test in the primary language of a limited-English-proficient pupil who has attended a school in the United States for 3 consecutive years or more.

This bill would require the department to use funds appropriated in the annual Budget Act for the purpose of developing and adopting primary language versions of assessments that are aligned to the state academic content standards in the dominant primary language of limited-English-proficient pupils no later than July 1, 2008. The bill would require the department to conduct a survey of public schools by January 1, 2008, to identify and quantify assessments in languages other than the dominant primary language and develop criteria to determine when assessments in languages other than the dominant primary language should be administered. The bill would require the department, on or before January 1, 2008, to submit a report to the Legislature on the development and implementation of the initial primary language assessments and modified English language assessments and recommendations on the development and implementation of future assessments and funding requirements.

This bill would provide that a school or school district is not to advance to the next level of program improvement status or be found to have failed to meet their Academic Performance Index growth targets on the basis of the test scores of recent immigrant pupils who have attended a school in the United States for less than 3 consecutive years, or any test other than the primary language of modified English tests. The bill would provide that certain sanctions are not to be enforced against a school or school district solely on the basis of the test scores of recent immigrant pupils until the primary language and modified English tests are available.

Existing law, operative July 1, 2007, requires a school district to report certain information to the Superintendent of Public Instruction as a condition of receiving an apportionment for purposes of administering the tests under the STAR Program.

This bill would require school districts to report additional information relating to the testing of limited-English-proficient pupils.

To the extent this bill would impose additional duties on school districts, this bill would create a state-mandated local program.

(2) Existing law requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to develop a high school exit examination in English language arts and mathematics in accordance with state academic content standards. Existing law requires, commencing with the 2003–04 school year, each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

This bill would require the State Department of Education to develop, by July 1, 2007, a modified version of the high school exit examination, as provided, for pupils who are English language learners.

(3) This bill would make other technical, nonsubstantive changes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
3 (1) The federal No Child Left Behind Act of 2001 requires
4 states to test all pupils in a valid and reliable manner and
5 requires, to the extent practicable, that pupils with limited
6 English proficiency be tested in the language and form most
7 likely to yield accurate data on academic subject areas.
8 (2) Approximately one of every four pupils enrolled in
9 California’s public schools is identified as a pupil with limited
10 English proficiency.

1 (3) The current academic assessment system does not allow
2 pupils with limited English proficiency to show academic ability
3 in academic subject areas.

4 (4) Exclusive reliance on academic assessments designed for
5 native English speakers to gauge the academic progress of pupils
6 with limited English proficiency violates standards for
7 educational testing established by recognized national
8 educational institutions, including the American Educational
9 Research Association, the American Psychological Association,
10 and the National Council on Measurement in Education.

11 (5) Valid and reliable academic assessment data is critical to
12 the education accountability system.

13 (6) An accountability system that would yield more accurate
14 data on the academic ability of pupils with limited English
15 proficiency is needed.

16 (7) Local educational agencies shall not experience negative
17 consequences solely based on the scores of recent immigrant
18 pupils on tests that do not provide valid and reliable diagnostic
19 information about what these pupils know and can do in
20 academic subject areas.

21 (b) It is therefore the intent of the Legislature to bring the
22 system of assessing the academic progress of pupils with limited
23 English proficiency into alignment with the requirements of the
24 federal No Child Left Behind Act of 2001.

25 (c) It is further the intent of the Legislature to reconcile the
26 data received from the Adequate Yearly Progress under the
27 federal No Child Left Behind Act of 2001 and the Academic
28 Performance Index.

29 SEC. 2. Section 60640 of the Education Code, as amended by
30 Section 5 of Chapter 676 of the Statutes of 2005, is amended to
31 read:

32 60640. (a) There is hereby established the Standardized
33 Testing and Reporting Program, to be known as the STAR
34 Program.

35 (b) Commencing in the 2007-08 fiscal year and each fiscal
36 year thereafter, and from the funds available for that purpose,
37 each school district, charter school, and county office of
38 education shall administer to each of its pupils in grades 3 and 7
39 the achievement test designated by the state board pursuant to
40 Section 60642 and shall administer to each of its pupils in grades

3 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. *Pupils identified as limited English proficient and who are administered the assessments specified in subdivision (f) are exempt from taking the tests designated pursuant to Sections 60642 and 60642.5.* The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by ~~subdivision~~ *subdivisions (b) and (f)* as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

~~(f) (1) At the option of the school district, a pupil with limited English proficiency who is enrolled in any of grades 3 to 11, inclusive, may take a second achievement test in his or her primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. (A) A pupil identified as limited English proficient, and who is either literate in his or her primary language or receives instruction in his or her primary language, shall take the achievement test required by Section 60642.5 in his or her primary language as soon as the primary language test is available. These primary language tests shall produce individual pupil scores that are valid and reliable.~~

~~(B) (i) A pupil identified as limited English proficient who has attended a school in the United States, excluding the Commonwealth of Puerto Rico, for three consecutive years or more, shall take the achievement test in English that is modified~~

1 *pursuant to clause (ii) instead of the primary language*
2 *achievement test required by subparagraph (A), except as*
3 *provided in clause (iii).*

4 *(ii) The department shall, by January 1, 2008, modify the*
5 *achievement test administered pursuant to Section 60642.5 in*
6 *order to eliminate unnecessary linguistic complexity to the extent*
7 *possible. The modifications shall be based upon research*
8 *designed to maintain the rigor of the test but enable a pupil with*
9 *limited English proficiency to better understand test directions,*
10 *questions, and answers.*

11 *(iii) Notwithstanding clause (i), a school district may, on a*
12 *case-by-case basis, administer an achievement test in the*
13 *primary language of a pupil if it finds that it is likely that a*
14 *primary language test would yield an assessment that is more*
15 *accurate and reliable. This authorization shall not exceed two*
16 *additional consecutive years for a pupil described in clause (i)*
17 *beyond the three consecutive years of attending a school in the*
18 *United States.*

19 *(C) A pupil identified as limited English proficient for whom a*
20 *test in his or her primary language is not available shall take an*
21 *achievement test required by subdivision (b) in English that is*
22 *modified pursuant to clause (ii) of subparagraph (B).*

23 *(D) An achievement test administered pursuant to this*
24 *subdivision shall yield assessment data that is more accurate*
25 *than data yielded from an achievement test in English required*
26 *by subdivision (b). The results of an achievement test*
27 *administered pursuant to this subdivision may also be*
28 *disaggregated by type of program, duration in a program, and*
29 *English proficiency. The results of an achievement test*
30 *administered pursuant to this subdivision shall be used to*
31 *determine adequate yearly progress pursuant to the federal No*
32 *Child Left Behind Act of 2001, and for purposes of the Academic*
33 *Performance Index.*

34 *(2) Notwithstanding any other law, the state board shall*
35 *designate for use, as part of this program, a single primary*
36 *language test in each language for which a test is available for*
37 *grades 3 to 11, inclusive, pursuant to the process used for*
38 *designation of the assessment chosen in the 1997-98 fiscal year,*
39 *as specified by Sections 60642 and 60643, and as specified by*
40 *Section 60642.5, as applicable.*

1 (3) (A) ~~The department shall use funds made available~~
2 ~~pursuant to Title VI of the federal No Child Left Behind Act of~~
3 ~~2001 and appropriated by the annual Budget Act for the purpose~~
4 ~~of developing and adopting primary language assessments that~~
5 ~~are aligned to the state academic content standards. Subject to the~~
6 ~~availability of funds, primary language assessments shall be~~
7 ~~developed and adopted for reading/language arts and~~
8 ~~mathematics in the dominant primary language of~~
9 ~~limited-English-proficient pupils. The department shall use~~
10 ~~funds appropriated in the annual Budget Act for the purpose of~~
11 ~~developing and adopting primary language versions of~~
12 ~~assessments required by subdivision (b) that are aligned to the~~
13 ~~state academic content standards in the dominant primary~~
14 ~~language of limited-English-proficient pupils no later than July~~
15 ~~1, 2008. It is the intent of the Legislature that funds made~~
16 ~~available pursuant to Title III and Title VI of the federal No~~
17 ~~Child Left Behind Act of 2001 and any other federal funds shall~~
18 ~~be made available for the purpose of developing and adopting~~
19 ~~primary language assessments pursuant to this section. The~~
20 ~~dominant primary language shall be determined by the count in~~
21 ~~the annual language census of the primary language of each~~
22 ~~limited-English-proficient pupil enrolled in the California public~~
23 ~~schools. The department shall, by January 1, 2008, conduct a~~
24 ~~survey of public schools in order to identify and quantify~~
25 ~~assessments in languages other than the dominant primary~~
26 ~~language, and develop criteria to determine when assessments in~~
27 ~~languages other than the dominant primary language should be~~
28 ~~administered.~~

29 (B) ~~Once a dominant~~ *an academic content standards aligned*
30 *primary language assessment is available for use for a specific*
31 *grade level, it shall be administered in place of the assessment*
32 *designated pursuant to paragraph (1) for that grade level.*

33 (C) In selecting a contractor to develop a primary language
34 assessment, the state board shall consider the criteria for
35 choosing a contractor or test publisher as specified by Sections
36 60642 and 60643, and as specified by Section 60642.5, as
37 applicable. *The contractor shall have expertise and experience in*
38 *developing test items that conform to the research on high stakes*
39 *test accommodations and that control the linguistic complexity in*

1 *order to increase the probability of second language learners*
2 *understanding the language of the test items.*

3 (D) Subject to the availability of funds, the assessments shall
4 be developed in grade order starting with the lowest grade
5 subject to the STAR Program.

6 (E) If the state board contracts for the development of primary
7 language assessments or test items to augment an existing
8 assessment, the state shall retain ownership rights to the
9 assessment and the test items. With the approval of the state
10 board, the department may license the test for use in other states
11 subject to a compensation agreement approved by the
12 Department of Finance.

13 (F) *On or before January 1, 2008, the department shall submit*
14 *to the Legislature a report on the development and*
15 *implementation of the initial primary language assessments and*
16 *modified English language assessments and recommendations on*
17 *the development and implementation of future assessments and*
18 *funding requirements.*

19 ~~(g) A pupil identified as limited English proficient pursuant to~~
20 ~~the administration of a test made available pursuant to Section~~
21 ~~60810 who is enrolled in any of grades 3 to 11, inclusive, and~~
22 ~~who either receives instruction in his or her primary language or~~
23 ~~has been enrolled in a school in the United States for less than 12~~
24 ~~months shall be required to take a test in his or her primary~~
25 ~~language if a test is available. A school or school district shall~~
26 ~~not advance to the next level of program improvement status or~~
27 ~~be found to have failed to meet their Academic Performance~~
28 ~~Index growth targets on the basis of the test scores of recent~~
29 ~~immigrant pupils who have attended a school in the United~~
30 ~~States, excluding the Commonwealth of Puerto Rico, for less than~~
31 ~~three consecutive years, or any test other than the primary~~
32 ~~language of modified English tests described in clauses (i) and~~
33 ~~(ii), respectively, of subparagraph (B) of paragraph (1) of~~
34 ~~subdivision (f). In addition, until the primary language and~~
35 ~~modified English tests described in clauses (i) and (ii),~~
36 ~~respectively, of subparagraph (B) of paragraph (1) of subdivision~~
37 ~~(f) are available, the following sanctions shall not be enforced~~
38 ~~against a school or school district solely on the basis of the test~~
39 ~~scores of recent immigrant pupils:~~

1 (1) *Requirements that the school district prepare or implement*
2 *restructuring plans for school staffing and governance.*

3 (2) *Determination of ineligibility of the school or school*
4 *district to serve as a supplemental service provider.*

5 (h) (1) The Superintendent shall apportion funds to school
6 districts to enable school districts to meet the requirements of
7 subdivision (b), the alternative assessment required by
8 subdivision (e), and ~~subdivisions subdivision (f) and (g).~~

9 (2) The state board shall annually establish the amount of
10 funding to be apportioned to school districts for each test
11 administered and shall annually establish the amount that each
12 publisher shall be paid for each test administered under the
13 agreements required pursuant to Section 60643. The amounts to
14 be paid to the publishers shall be determined by considering the
15 cost estimates submitted by each publisher each September and
16 the amount included in the annual Budget Act, and by making
17 allowance for the estimated costs to school districts for
18 compliance with the requirements of subdivision (b), the
19 alternative assessment required by subdivision (e), and
20 ~~subdivisions subdivision (f) and (g).~~

21 (3) An adjustment to the amount of funding to be apportioned
22 per test may not be valid without the approval of the Director of
23 Finance. A request for approval of an adjustment to the amount
24 of funding to be apportioned per test shall be submitted in writing
25 to the Director of Finance and the chairpersons of the fiscal
26 committees of both houses of the Legislature with accompanying
27 material justifying the proposed adjustment. The Director of
28 Finance is authorized to approve only those adjustments related
29 to activities required by statute. The Director of Finance shall
30 approve or disapprove the amount within 30 days of receipt of
31 the request and shall notify the chairpersons of the fiscal
32 committees of both houses of the Legislature of the decision.

33 (i) For the purposes of making the computations required by
34 Section 8 of Article XVI of the California Constitution, the
35 appropriation for the apportionments made pursuant to paragraph
36 (1) of subdivision (h), and the payments made to the publishers
37 under the contracts required pursuant to Section 60643 or
38 subparagraph (C) of paragraph (1) of subdivision (a) of Section
39 60605 between the department and the contractor, are "General
40 Fund revenues appropriated for school districts," as defined in

subdivision (c) of Section 41202, for the applicable fiscal year, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the Superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 3 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 3 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(4) The number of pupils to whom a primary language achievement test was administered in grades 3 to 11, inclusive, in the school district.

(5) The number of pupils to whom a linguistically modified achievement test was administered in grades 3 to 11, inclusive, in the school district.

(k) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the assessment results of the California Standards Tests, including, but not limited to, the augmented California Standards Tests, for academic credit, placement, or admissions processes.

(l) The Superintendent shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.

(m) This section shall become operative July 1, 2007.

SEC. 3. Section 60850 of the Education Code is amended to read:

60850. (a) ~~(1) The Superintendent of Public Instruction,~~ with the approval of the ~~State Board of Education~~ *state board*, shall develop a high school exit examination in English language arts and mathematics in accordance with the statewide academically rigorous content standards adopted by the ~~State Board of Education~~ *state board* pursuant to Section 60605. To facilitate the development of the *high school exit* examination, ~~the superintendent~~ *Superintendent* shall review any existing high

1 school subject matter examinations that are linked to, or can be
2 aligned with, the statewide academically rigorous content
3 standards for English language arts and mathematics adopted by
4 the ~~State Board of Education~~ *state board*. By October 1, 2000,
5 the ~~State Board of Education~~ *state board* shall adopt a high
6 school exit examination that is aligned with statewide
7 academically rigorous content standards.

8 (2) *By July 1, 2007, the department shall develop a modified*
9 *version of the high school exit examination for pupils who are*
10 *English language learners, eliminating unnecessary linguistic*
11 *complexity to the extent possible. The modifications shall be*
12 *based upon research designed to maintain the rigor of the exit*
13 *examination but enable a pupil with limited English proficiency*
14 *to better understand exit examination directions, questions, and*
15 *answers.*

16 (b) The Superintendent ~~of Public Instruction~~, with the
17 approval of the ~~State Board of Education~~ *state board*, shall
18 establish a High School Exit Examination Standards Panel to
19 assist in the design and composition of the *high school* exit
20 examination and to ensure that the *exit* examination is aligned
21 with statewide academically rigorous content standards.
22 Members of the panel shall include, but are not limited to,
23 teachers, administrators, school board members, parents, and the
24 general public. Members of the panel shall serve without
25 compensation for a term of two years and shall be representative
26 of the state's ethnic and cultural diversity and gender balance.
27 The ~~superintendent~~ *Superintendent* shall also make the best effort
28 to ensure representation of the state's diversity relative to urban,
29 suburban, and rural areas. The ~~State Department of Education~~
30 *department* shall provide staff to the panel.

31 (c) The Superintendent ~~of Public Instruction~~ shall require that
32 the *high school exit* examination be field tested before actual
33 implementation to ensure that the *exit* examination is free from
34 bias and that its content is valid and reliable.

35 (d) Before the ~~State Board of Education~~ *state board* adopts the
36 *high school* exit examination, the Superintendent ~~of Public~~
37 ~~Instruction~~ shall submit the *exit* examination to the Statewide
38 Pupil Assessment Review Panel established pursuant to Section
39 60606. The panel shall review all items or questions to ensure

1 that the content of the *exit* examination complies with the
2 requirements of Section 60614.

3 (e) The *high school* exit examination prescribed in subdivision
4 (a) shall conform to the following standards or it shall not be
5 required as a condition of graduation:

6 (1) The *exit* examination may not be administered to a pupil
7 who did not receive adequate notice as provided for in paragraph
8 (1) of subdivision (f) regarding the test.

9 (2) The *exit* examination, regardless of federal financial
10 participation, shall comply with Title VI of the Civil Rights Act
11 (42 U.S.C. Sec. 2000d et seq.), its implementing regulations (34
12 C.F.R. Part 100), and the Equal Educational Opportunities Act of
13 1974 (20 U.S.C. Sec. 1701).

14 (3) The *exit* examination shall have instructional and curricular
15 validity.

16 (4) The *exit* examination shall be scored as a criterion
17 referenced examination.

18 (f) For purposes of this section, the following terms have the
19 following meanings:

20 (1) “Accommodations” means any variation in the assessment
21 environment or process that does not fundamentally alter what
22 the test measures or affect the comparability of scores.
23 “Accommodations” may include variations in scheduling,
24 setting, aids, equipment, and presentation format.

25 (2) “Adequate notice” means that the pupil and his or her
26 parent or guardian have received written notice, at the
27 commencement of the pupil’s 9th grade, and each year thereafter
28 through the annual notification process established pursuant to
29 Section 48980, or if a transfer pupil, at the time the pupil
30 transfers. A pupil who has taken the *high school* exit examination
31 in the 10th grade is deemed to have had “adequate notice” as
32 defined in this paragraph.

33 (3) “Curricular validity” means that the *exit* examination tests
34 for content found in the instructional textbooks. For the purposes
35 of this section, any textbook or other instructional material
36 adopted pursuant to this code and consistent with the state’s
37 adopted curriculum frameworks shall be deemed to satisfy this
38 definition.

39 (4) “Instructional validity” means that the *exit* examination is
40 consistent with what is expected to be taught. For the purposes of

1 this section, instruction that is consistent with the state’s adopted
2 curriculum frameworks for the subjects tested shall be deemed to
3 satisfy this definition.

4 (5) “Modification” means any variation in the assessment
5 environment or process that fundamentally alters what the test
6 measures or affects the comparability of scores.

7 (g) The *high school exit* examination shall be offered to
8 individuals with exceptional needs, as defined in Section 56026,
9 in accordance with paragraph (17) of subsection (a) of Section
10 1412 of Title 20 of the United States Code and Section 794 and
11 following of Title 29 of the United States Code. Individuals with
12 exceptional needs shall be administered the *exit* examination with
13 appropriate accommodations, where necessary.

14 (h) Nothing in this chapter shall prohibit a school district from
15 requiring pupils to pass additional exit examinations approved by
16 the governing board of the school district as a condition for
17 graduation.

18 SEC. 4. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.